

school uniform policy, finding that "the wearing of the protest logos in this case embodies exactly the kind of speech that is entitled to First Amendment protection."⁶⁹ Other recent cases have upheld the right of students to wear armbands to protest certain school policies.⁷⁰

This does not mean school officials have no authority to regulate buttons or armbands if they are disruptive or vulgar. In fact, if an armband or button could be shown to have created a substantial disruption, then school officials could prohibit such material under the *Tinker* standard. Likewise, if the buttons were pervasively vulgar, then the school officials could prohibit them under the *Fraser* standard.

44. Must a public school student salute the flag during a recitation of the Pledge of Allegiance?

No. In a 1943 decision, *West Virginia Board of Education v. Barnette*, the Supreme Court determined that a group of Jehovah's Witnesses who objected to the flag salute and mandatory pledge recitation for religious reasons could not be forced to participate.⁷¹ This means that public school students who choose not to join in the flag salute for reasons of conscience may not be compelled to recite the Pledge of Allegiance.

The Court's decision in *Barnette* was highly unusual, given that just three years earlier the Court ruled that students *could* be compelled to recite the Pledge in school. Writing for the Court in the 1940 decision of *Minersville School District v. Gobitis*, Justice Felix Frankfurter said:

Even if it were assumed that freedom of speech . . . includes freedom from conveying what may be deemed an implied but rejected affirmation, the question remains whether school children . . . must be excused from conduct required of all the other children in the promotion of national cohesion.⁷²

In the *Barnette* decision, however, the Court reversed course, declaring:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.⁷³

The Pledge of Allegiance has been a source of controversy for other reasons as well. Some students and parents view the words "under God" in

the Pledge as government endorsement of religion under the Establishment Clause.⁷⁴ This argument had failed in the courts until 2002 when a panel of the Ninth Circuit Court of Appeals ruled that state-mandated recitations of the pledge in public schools were unconstitutional because of the words "under God."⁷⁵ Most legal experts agree that this ruling will be overruled—either by the full circuit court or by the U.S. Supreme Court. In a number of past decisions, the Court has viewed references to God in patriotic exercises and on our money as "ceremonial deism" that does not rise to the level of government establishment of religion prohibited by the First Amendment.

45. How far may schools go in restricting student speech in the interest of school safety?

School safety is arguably the single most compelling interest of any community—and certainly the foremost issue in the minds of many parents. Therefore, courts have become increasingly deferential to school safety concerns.

This is especially true since the school shootings in Littleton, Colorado; Springfield, Oregon; and other communities, which have caused school administrators to focus more attention on ensuring safe school environments. As a result, many public schools across the country have adopted a variety of restrictions on students' free expression rights.⁷⁶

However, some restrictions of student speech rights have been excessive, and many students have been punished for artwork, class essays, and poems. Two commentators neatly illustrate the problem:

In this evolving area of the law, the goal of creating safe and orderly school environments and the potential for school district liability demand that schools carefully assess threats of violence and determine appropriate responses. Yet, in marshalling resources to curb aggression and violence in our nation's schools, policy makers, administrators, and teachers must balance the often competing demands for safer schools with the constitutional rights of their students. The goal of school safety cannot be achieved by compromising the constitutional guarantees of those who comprise our school communities.⁷⁷

From a legal perspective, schools can restrict student speech in the name of safety if (1) they can reasonably forecast substantial disruption under *Tinker*; or (2) the student expression is a true threat.